

Steven T. Singer
Counselor-At-Law
34 Hillside Avenue
Montclair, New Jersey 07042
Tel: 973.744.6093
Fax: 973.744.6097
Email: stsinger@verizon.net

FOR SETTLEMENT PURPOSES ONLY/ SUBJECT TO FED. R. EVID. 408

October 5, 2017

Juan Fajardo, Esq.
Office of Regional Counsel
United States Environmental Protection Agency
290 Broadway
17th Floor
New York, New York 10007

RECEIVED
OCT 9 1 30

Re: Diamond Alkali Superfund Site
OU2 Allocation and Cash-Out Settlement Process

Dear Mr. Fajardo:

On behalf of Darling International, Inc. (now known as Darling Ingredients, Inc.), please accept this letter in response to the September 18, 2017 letter from Deputy Director Eric Wilson concerning the allocation and cash out process for the March 2016 Record of Decision for Operable Unit 2 of the Diamond Alkali Superfund Site. We have significant concerns about the allocation process and write to offer a recommendation to ensure that the process is fair and efficient for all parties.

As background, in 1996, Darling acquired the stock of Standard Tallow Corporation ("STC"), which had operated two rendering facilities in Kearny and Newark, New Jersey. Neither facility was located on the Passaic River. Darling never operated either facility, Standard Tallow was not merged into Darling, and Darling never assumed the liabilities of Standard Tallow.

Darling recently engaged the firm of Pastor, Behling & Wheeler to conduct a comprehensive review of the documentation concerning the Standard Tallow operations. Both of the Standard Tallow facilities processed only organic raw materials and no chemicals were used in the rendering process. The only possible constituents of concern that might have been present in any wastewater/storm water discharged from the STC facilities would be biodegradable BOD, COD and animal/vegetable derived fats. The PBW report, which we previously shared with the Agency, specifically concludes that neither STC facility was the source of any of the EPA-identified Contaminants of Concern in connection with the Lower Passaic River.

528254



Juan Fajardo, Esq.
October 5, 2017

In prior communications on this matter, EPA has consistently indicated that it intended to offer cash out settlements to those parties who were not responsible for the discharge of dioxins, furans or PCBs to the Lower Passaic, while those parties that discharged such contaminants would be expected to perform the selected remedy. However, the EPA's September 18, 2017 letter indicates that all of the aforesaid parties will be part of the upcoming allocation process.

In that same letter, EPA states that it will make a decision concerning cash-out settlement offers "[a]fter the allocator assigns shares to the parties." It is not clear if EPA intends to delay offering cash-out settlements until the allocator has made a final determination as to the shares of all participating PRP's. If so, this would be patently unfair to those parties that did not contribute Contaminants of Concern to the Lower Passaic. Parties that are *de micromis* or *de minimis* under EPA settlement policy would be forced to bear unnecessary and inequitable transaction costs, that may exceed their ultimate fair share, by being forced to participate in a lengthy and expensive allocation process for all PRP's.

To avoid this unfair result, we respectfully suggest that the allocation process commence by dividing the PRPs into the three groups:

1. Group 1 would include those parties who are the same as, or substantially similar to those parties that have already received EPA's initial cash-out settlement offer. This group would include parties that did not contribute COCs to the Lower Passaic and those parties that because of remoteness or the nature of their discharges likely had no COCs that reached, or would be present in the Lower Passaic.
2. Group 2 would be comprised of parties who contributed COC's other than dioxins, furans or PCBs to the Lower Passaic.
3. Group 3 would consist of those parties that contributed dioxins, furans or PCBs to the Lower Passaic.

The allocator would then work on arriving at individual share allocations within each group. To promote fairness and efficiency, settlement opportunities for parties in the first and second groups should not be delayed pending individual determinations for those parties in the third group, when those latter determinations are likely to take entail a multiyear, and extraordinarily expensive, process to complete. This would address the concern expressed by EPA in its September 18, 2017 letter that those parties not associated with dioxins, furans and PCBs should not have to bear an unnecessary financial burden before having an opportunity to settle. This would also enable the allocator to focus his efforts and attention on the most complex part of this process, without the distraction of continuing to manage the peripheral parties.

Juan Fajardo, Esq.
October 5, 2017

We believe that the process that is outlined above, will result in a fair and efficient allocation process that minimizes transaction costs to those whose nexus to the Lower Passaic is tangential at best. On behalf of Darling, I respectfully request that the EPA share this letter and proposal with Mr. Batson in advance of the October 13, 2017 meeting.

Please do not hesitate to contact me should you have any questions concerning this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "St. Singer".

Steven T. Singer, Esq.

Cc: Eric Schaaf, Esq. USEPA
Sarah Flanagan, Esq. USEPA
Mr. Eric Wilson, USEPA
John Sterling, Esq.